

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1581 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIRABHAI MOHANBHAI PATEL

Versus

RAMDAS MAGANBHAI PATEL

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR BS PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/12/2000

C.A.V. JUDGEMENT

As recorded in the previous order dated 6.12.1999
this revision application is treated as revision against
the judgment and order dated 29.10.1993 passed by the
learned 3rd Joint Civil Judge at Bharuch allowing
Misc.Civil Application 24 of 1978 of the decree-holder

and rejecting Misc.Civil Application No.8 of 1982 which was filed by the present petitioner under Order 21 Rule 99 of the Civil Procedure Code.

2. Short facts giving rise to this revision application are as under :-

2.1 Dabhaibhai Nathabhai Patel filed Special Civil Suit No.2 of 1968 for specific performance of contract which was entered into by Hirabhai Mohanbhai Patel (hereinafter referred to as "the original defendant") for sale of suit land bearing Revenue Survey No.361 admeasuring 3 acres and 3 gunthas situated at village Samlod, Bharuch District. The trial court did not pass any decree for specific performance but decreed the suit requiring the defendant to refund Rs.4450/- with interest at the rate of 9% p.a. from the date of filing of suit.

2.2 Since the defendant did not pay the decretal amount the plaintiff filed Execution Application 18/69. Public auction was held where the respondent herein Ramdas Maganbhai Patel offered to purchase the land for Rs.23,000/-. However, Ramdas Maganbhai Patel did not deposit 1/4th of the bid amount and hence the land was not sold pursuant to the said public auction, but another public auction was held and again in this auction respondent-Ramdas Patel offered highest bid of Rs.11,501/-. The sale deed was executed by the Court Commissioner for S.No.371 (instead of S.No.361) in favour of respondent-Ramdas Patel. Subsequently, amendment application was granted for amending the mistake in the sale deed as the land belonging to original defendant No.1 was S.No.361 whereas the sale deed covered S.No.371. That application was granted by the executing Court on 25.2.80.

2.3 The respondent filed Misc. Civil Application No. 24/78 for recovering the possession of the land. The petitioner herein filed Misc.C.A.No.8 of 1982 for return of the land to the petitioner as the land was the joint family property and was not of the exclusive ownership of Mohanbhai Becharbhai Patel. The Executing Court by its judgment and order dated 29.10.1993 allowed M.C.No.24/78 filed by the respondent and dismissed Misc.C.A.No.8/82 filed by the petitioner. The petitioner, thereafter filed appeal before the District Court, Bharuch and filed Misc.C.A.No.66/94 for condonation of delay. By order dated 15.10.1996 of the District Court, said Misc.C.A.No.66/94 was returned to the petitioner as the appeal was held to be not competent. Against the said order dated 15.10.96 the petitioner preferred revision

application which is now treated as revision application against the order dated 29.10.1993 passed by the executing Court.

3. The petitioner argued the matter as a party in person. At the suggestion of the Court, the petitioner was also given the assistance of learned advocate Mr Ananad Yagnik. Various contentions are urged on behalf of the petitioner. It is not necessary to enumerate and deal with all of them in view of the fact that this Court proposes to remand the matter to the Executing Court. Suffice it to state that the following contentions were urged by and on behalf of the petitioner:-

- (i) The land in question was not of the exclusive ownership of Mohanbhai Becharbhai Patel. It was the joint family property which Mohanbhai Becharbhai Patel had no right to sell.
- (ii) Mohanbhai was of unsound mind and had disappeared before the auction was held.
- (iii) The land in question was a fragment and the proper procedure was not followed before selling the land to respondents.
- (iv) The first auction was held for the suit land in S.No.361 for which the respondent had offered higher bid amount of Rs.23,000/- but did not deposit 1/4th of the bid amount and another auction was held for the land in S.No.371 and the respondent offered amount of Rs.12,000/and land in S.No.371 was sold to the respondent, but subsequently correction was made in the sale deed by making reference to S.No.361. Thus, the respondent obtained the land for Rs.11,000/- for which earlier he himself had offered Rs.23,000/-.
- (v) The respondent could not have purchased the land in question by participating in public auction as he was a Government/panchayat employee.
- (vi) The land in question could not have been sold without prior permission of the Collector and proper procedure for obtaining the said permission was not followed.

4. On the other hand, Mr.B.S.Patel, learned counsel for the respondent opposed the revision application and submitted that it is not open to the petitioner to raise

such contention as the petitioner had earlier filed Appeal being First Appeal No.366/71 and the same came to be dismissed by the judgment and decree dated 15.12.1976. Thereafter, the petitioner has also preferred Civil Revision Application No.322/82 which came to be disposed of by judgment and order, dated 16.3.1982 under which the petitioner was permitted to take away the standing crops and the respondent was directed to deposit Rs.2730/- for removing the standing crop sown by the petitioner. The said amount was deposited by the respondent and withdrawn by the petitioner and hence the issues raised by the petitioner in the revision are barred by principles of resjudicata. Mr.Patel submitted that requisite procedure was followed before the sale deed was executed. The mistake in the sale deed was required to be corrected because in place of S.No.361, S.No.1.371 was referred to inadvertently.

5. Having heard the learned counsel for the parties, it appears to the Court that while the Executing Court has dealt with some of the contentions like correction in the sale deed regarding the survey number of the land in question, the Executing Court has not dealt with all the contentions properly such as the contention of about the purchaser being prohibited from participating at the public auction on the ground that he was an employee of the Government/panchayat.

The Court is conscious of the fact that this is a very old litigation and the respondent has invoked the principle of constructive res judicata. As is well known the provisions contained in Section 11 of the CPC and the principle of res judicata are based on a public policy to give finality to a judicial decision. But the provisions contained in the various land legislations as well as in the prohibition against a public servant participating in public auctions are also based on public policy. In the peculiar facts and circumstances of the case more particularly the fact that the respondent-purchaser was a public servant and the fact that earlier the highest bid offered for the land in question was Rs.23000/- but on subsequent auction the price at which the land was sold was only Rs.11,501/-, this is an important issue which is required to be looked into. It is true that the challenge on other grounds was carried upto this Court but when the dispute is about non-compliance with the provisions made in public interest, in the peculiar facts and circumstances of the case, the Executing Court was required to deal with all such contentions properly and exhaustively.

6. In view of the above discussion, the impugned order dated 29.10.1993 passed by the Civil Court at Bharuch in Misc. Civil Application No. 24/78 and Misc. Civil Application No. 8/82 is hereby quashed and set aside and the Executing Court shall permit the petitioner to agitate all the contentions based on legal provisions and all other contentions including the contentions which were raised at the hearing of this revision and set out in para 3 hereinabove.

7. The revision application is accordingly partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8. The Court would like to place on record the valuable assistance rendered by Mr Anand Yagnik to the Court.

(M.S. Shah, J.)